

BILL NO. G-71-01-//

GENERAL ORDINANCE NO. G- *Withdrawn*

AN ORDINANCE prohibiting the sale, lending or exhibition of harmful materials to minors and imposing penalties.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Definitions. As used in this Ordinance:

- (a) "Minor" means any person under the age of eighteen (18) years.
- (b) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
- (d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (e) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (f) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
 - (i) predominantly appeals to the prurient, shameful or morbid interest of minors, and
 - (ii) is utterly without redeeming social importance for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(i) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

(ii) the age of the minor, Provided however, That an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

SECTION 2. It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

(a) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct or sado-masochistic abuse which is harmful to minors or

(b) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of subdivision two hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole is harmful to minors.

SECTION 3. It shall be unlawful for any person knowingly to exhibit to a minor for a monetary consideration or knowingly to sell to a minor an admission ticket or pass, or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

SECTION 4. It shall be unlawful for any person knowingly to exhibit a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors in such manner that it may be viewed by minors.

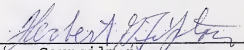
SECTION 5. It shall be unlawful for any minor to knowingly misrepresent his age for the purpose of obtaining admission to any such motion picture, show or other presentation which is harmful to minors as defined in Section 1, subsection (f) of this ordinance.

SECTION 6. Any person violating any provision of this ordinance shall be guilty of a misdemeanor and upon conviction shall be subject to a penalty not to exceed one thousand dollars (\$1,000) or to imprisonment for a period not to exceed six (6) months, or to both such penalty and imprisonment.

SECTION 7. When an affidavit filed against a person charging him with the violation of any of the provisions of this ordinance, the Court or judge thereof shall examine said affidavit to determine if the material allegedly obscene referred to in said affidavit is sufficient to justify further proceedings in the prosecution thereof. If the Judge determines that said alleged harmful material is not, on its face, unlawful he shall dismiss the affidavit. If the Judge determines that said alleged obscene material set out in the affidavit does, on its face, constitute sufficient cause to proceed with the prosecution, the Judge shall fix a time and place for a hearing to determine whether probable cause exists for the issuance of a warrant of arrest and the Court shall direct the Clerk of the Court to issue notice immediately with a copy of the affidavit attached to the person against whom the affidavit is filed giving said person at least five (5) days notice of said hearing and that said person may subpoena witnesses and present evidence at said hearing. The hearing shall, in no event, be held later than ten (10) days following the issuance of said notice.

If after hearing evidence the Court finds that probable cause exists for the issuance of a warrant of arrest, he shall direct the Clerk to issue immediately a warrant of arrest returnable forthwith. If the Court finds after hearing evidence that no probable cause exists for the issuance of a warrant of arrest he shall enter such finding of record and dismiss the said affidavit. It is the purpose of this section to provide any person charged with the commission of an offense under this ordinance a prior adversary hearing before the issuance of a warrant for the arrest of said person and the seizure of evidence incidental to such arrest.

SECTION 8. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

APPROVED AS TO FORM
AND LEGALITY.


ATTORNEY

Read the first time in full and on motion by _____ seconded by _____ and duly adopted, read the second time by title and referred to the Committee on _____ (and to the City Plan Commission for recommendation) (and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____ the _____ day of _____ 197____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by _____ seconded by _____ and duly adopted, placed on its passage.

Passed (LOST) by the following vote:

AYES _____, NAYS _____, ABSTAINED _____, ABSENT _____ to-wit:

Burns	_____	_____	_____	_____
Hinga	_____	_____	_____	_____
Kruse	_____	_____	_____	_____
Nuckols	_____	_____	_____	_____
Moses	_____	_____	_____	_____
Schmidt, D.	_____	_____	_____	_____
Schmidt, V.	_____	_____	_____	_____
Steir	_____	_____	_____	_____
Talarico	_____	_____	_____	_____

Date _____

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(Zoning Map)~~ (General) ~~(Annexation)~~ ~~(Special)~~ ~~(Appropriation)~~ Ordinance ~~(Resolution)~~ No. 9 on the _____ day of _____, 1977.

ATTEST: (SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 1977 at the hour of 8:30 o'clock 4.M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____.M., E.S.T.

MAYOR

Read the first time in full and on motion by Tipton seconded by Robinson and duly adopted, read the second time by title and referred to the (Committee on) Regulations (and to the City Plan Commission for recommendation) (and Public Hearing to be held after due legal notice, at the Council Chambers, City Hall, Fort Wayne, Indiana, on the _____ day of _____, 1967, at _____ o'clock, P.M., E.S.T.

Date: 1-12-71

Frank J. Bonakowski
City Clerk

Read the third time in full and on motion by _____ seconded by _____ and duly adopted, placed on its passage.

Passed (LOST) by the following vote:

AYES _____, NAYS _____, ABSTAINED _____, ABSENT _____ to-wit:

Adams	_____	_____	_____	_____
Dunifon	_____	_____	_____	_____
Fay	_____	_____	_____	_____
Geake	_____	_____	_____	_____
Nuckols	_____	_____	_____	_____
Robinson	_____	_____	_____	_____
Rousseau	_____	_____	_____	_____
Steigerwald	_____	_____	_____	_____
Tipton	_____	_____	_____	_____

Date _____

City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map)(General)(Annexation)(Special)(Appropriation)-Ordinance (Resolution) No. 24

on the _____ day of _____, 1967.

ATTEST: (SEAL)

City Clerk

Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 1967 at the hour of 8:30 o'clock A.M., E.S.T.

City Clerk

Approved and signed by me this _____ day of _____, 1967, at the hour of _____ o'clock _____M., E.S.T.

Mayor

WITHDRAWAL OF GENERAL ORDINANCE NO. G-71-01-11

On motion by Councilman Talarico, Bill No. G-71-01-11
seconded by Hinga

AN ORDINANCE prohibiting the sale, lending
or exhibition of harmful materials to minors
and imposing penalties.

that this ordinance No. G-71-01-11 is hereby withdrawn for no further action
by the Common Council of the City of Fort Wayne, on Bill No. G-71-01-11.

Passed (LOST) by the following vote;

	AYES	NAYS	ABSTAINED	ABSENT	to-wit
Burns	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Hinga	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Kraus	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Nuckols	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Moses	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Schmidt, D.	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Schmidt, V.	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Stier	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Talarico	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Date: July 25, 1972.

City Clerk

ATTEST: (SEAL)

City Clerk

Presiding Officer